

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. V-03/10-148
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Family Services Division, substantiating a report that petitioner physically abused two of her children. The preliminary issue is whether the petitioner's appeal is untimely.

DISCUSSION

The petitioner is a native of Sri Lanka who is legally in this country. The petitioner is the parent of three children including two daughters who are the subjects of the substantiation for physical abuse. Petitioner's daughters were in the custody of the Department at the time of the substantiation pursuant to a CHINS case; the daughters continue in the Department's custody. The petitioner was in the registry when the current allegation arose.

The petitioner appealed the substantiation to a Commissioner's Review and took part in the Commissioner's Review by teleconference on October 26, 2009. F.L. is

petitioner's friend and advocate. F.L. assisted petitioner during the Commissioner's Review process.

The Commissioner issued a Review of Substantiation on December 9, 2009 and mailed it to petitioner at an address in the Bronx. The Commissioner upheld the substantiation and included these appeal rights:

If you disagree with this decision, and you wish to appeal further, you should advise the Human Services Board, by writing to it within 30 days of when this letter was date stamped by the Post Office. The Board can be reached at:
(Bold in original notice).

The Board's mailing address and telephone number are set out in the notice.

The petitioner mailed her letter of appeal to the Board on March 18, 2010. The appeal was filed with the Board on March 22, 2010.

A telephone status conference was held on April 8, 2010 in which timeliness of the appeal was raised. The petitioner is seeking a good cause exception to the appeal deadlines. The petitioner did not argue that she filed a timely appeal. The parties were asked to brief the issues.

The Board's jurisdiction to hear these appeals is statutory. The pertinent parts of 33 V.S.A. § 4916b provide:

(a) Within 30 days of the date on which the administrative reviewer mailed notice of placement of a

report on the registry, the person who is the subject of the substantiation may apply in writing to the human services board of relief. The board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the department receives notice of the appeal, it shall make note in the registry record that the substantiation has been appealed to the board.

...

(d) If no review by the board is requested, the department's decision in the case shall be final, and the person shall have no further right for review under this section. The board may grant a waiver and permit such a review upon good cause shown.

The Board has dismissed appeals of substantiations as untimely when the petitioner files his/her appeal with the Board more than thirty days from the date the Commissioner's Review was mailed. See Fair Hearing No. H-07/08-305 affirmed by the Vermont Supreme Court in an unpublished decision, Supreme Court Docket No. 2009-193 (Nov. 18, 2009), Fair Hearing No. M-05/09-262.

The petitioner is asking for a good cause waiver to the finality provisions of 33 V.S.A. §4916b(d). The petitioner raises several factors in support of her argument.

The petitioner's argument is based on the following:

a. Although the review panel used the last known address in their files, petitioner was in contact with the district office and gave them current contact information. Petitioner believed that keeping in contact with the district office was sufficient for communicating with the department about her daughters.

b. Petitioner moved to Texas temporarily after the review meeting because she had a support network there of people from her homeland. At that time, she did not have permission to work in the United States limiting her ability to support herself and her son. (She now has her green card.)

c. Petitioner returned to Vermont and is presently fighting the State's action to terminate her parental rights. She is able to communicate with her attorney with the help of a facilitator.

d. Petitioner's comprehension of English is sufficient to function in daily life with some difficulty. She does not understand the functioning of the governmental entities or specific legal requirements.¹

e. The Department cannot prove when the Commissioner's Review letter was date stamped.

f. The Department's recitation of the event does not meet the criteria for physical abuse.

The petitioner's argument did not include supporting information such as dates regarding her addresses, the names of district Department staff, dates for contact with district Department staff, or how and when petitioner learned of the substantiation.

The Department argues that the petitioner has not shown good cause because, even assuming petitioner notified the district office, she did not take steps to tell the registry

¹ The petitioner's argument does not raise the issue that she needed an interpreter at her meetings with the Department or that she needed written materials translated. Thus, the Agency's Limited English Proficiency (LEP) policies in conformance with 42 U.S.C. § 2000d are not implicated in this decision.

review unit her address when she left the jurisdiction and because she had people aiding her with the Department. The Department points to F.L. and to the fact that petitioner had representation in Family Court proceedings involving her daughters starting in 2006. To summarize the Department's position, the petitioner was responsible to protect her appeal rights and did not do so.

It appears from the Department's argument that the Family Services Division does not have a database in which information such as an update of a party's address is available to all Family Services Division offices. This is a glitch in their system since an individual may well assume that giving contact information to one office of the Family Services Division is the same as notifying all the constituent parts of the Family Services Division. However, the information presented on petitioner's behalf in terms of informing the district office is vague.

Granting a waiver to the jurisdictional timelines is permissive and is predicated upon good cause. The Board has not ruled on a good cause exception in substantiation cases. Past decisions on timeliness stressed the need for finality of decisions as a reason to deny jurisdiction when an appeal is late.

Looking through prior Board decisions on timeliness, the Board tolled the time limit for a fair hearing request in Fair Hearing No. 12,674 (food stamp case). In that case, the Department caseworker sent a notice to a post office box that the caseworker knew had been closed and the caseworker instructed the post office not to forward the notice even though the caseworker knew the individual left a forwarding address.

There do not appear any other Board decisions addressing this issue. Good cause may include an accommodation under the Americans with Disabilities Act, times when an individual is unavailable such as hospitalization, or if there is a showing of equitable estoppel.

The record is insufficient for finding good cause to waive the appeal time limits. The petitioner did not buttress her allegations with the detail needed to ascertain that the time limits should be waived.

ORDER

The petitioner's appeal is untimely and there is not good cause to waive the appeal time limits. The petitioner's appeal is dismissed as untimely.

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